

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NORTH DAKOTA

ASSOCIATION OF EQUIPMENT  
MANUFACTURERS,  
AGCO CORPORATION,  
CNH INDUSTRIAL AMERICA LLC,  
DEERE & COMPANY and  
KUBOTA TRACTOR CORPORATION,

Plaintiffs,

Case No. 1:17-cv-00151-CSM

v.

THE HON. DOUG BURGUM, Governor  
of the State of North Dakota,  
in his Official Capacity,  
-and-

THE HON. WAYNE STENEHJEM,  
Attorney General of the State  
of North Dakota, in his Official  
Capacity,

Defendants,

-and-

NORTH DAKOTA IMPLEMENT  
DEALERS  
ASSOCIATION,

Intervenor.

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AUDIOVISUAL DEPOSITION OF  
MATTHEW LARSGAARD  
TAKEN ON BEHALF OF PLAINTIFFS  
March 8, 2018

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2                   FOR THE DISTRICT OF NORTH DAKOTA  
3  
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6           AGCO CORPORATION,  
7           CNH INDUSTRIAL AMERICA LLC,  
8           DEERE & COMPANY, and  
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10           Plaintiffs,                   Case No. 1:17-cv-00151-CSM  
11           v.  
12           THE HON. DOUG BURGUM, Governor  
13           of the State of North Dakota,  
14           in his Official Capacity,  
15           -and-  
16           THE HON. WAYNE STENEHJEM,  
17           Attorney General of the State  
18           of North Dakota, in his Official  
19           Capacity,  
20           Defendants,  
21           -and-  
22           NORTH DAKOTA IMPLEMENT  
23           DEALERS  
24           ASSOCIATION,  
25           Intervenor.  
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DEPOSITION OF MATTHEW LARSGAARD, produced,  
sworn and examined on March 8, 2018, commencing at  
9:44 a.m. and concluding at 4:27 p.m., at Doug  
Ketcham & Associates, 51 Broadway, Suite 130,  
Fargo, North Dakota 58102, before Shawn Weber,  
Court Reporter and Notary Public.

1 on any internal discussions regarding  
2 SB2289, I'm going to ask you not to answer.

3 BY MR. PURDON:

4 Q. That's -- okay. But -- but if his brother  
5 told him, you should call this lawyer, I don't think  
6 that's privileged under either of the privileges.

7 So my question is, to the extent not  
8 privileged, how did you choose the lawyer that you  
9 went to, to discuss the drafting of 2289?

10 MR. ALLEN: And I would just instruct  
11 you the same thing. To the extent that the  
12 association's decision was made through  
13 discussion, internal discussion about  
14 proposed legislation, I'm going to instruct  
15 you not to answer.

16 So if you can answer, feel free.  
17 Otherwise ...

18 THE DEPONENT: So having been in the  
19 industry since 2006, you become aware of  
20 law firms that work in different areas, law  
21 firms that have assisted dealers, maybe  
22 assisted manufacturers, and so you have a  
23 general idea of who's in the industry.

24 BY MR. PURDON:

25 Q. So based on your knowledge of the industry

1           THE DEPONENT: Yeah, so we just covered  
2           that like minutes ago, right? So, yeah,  
3           communicated the issues to the law firm  
4           after we had identified what some of those  
5           dealer concerns were.

6 BY MR. PURDON:

7           Q. Were there any writings memorizing your  
8           concerns?

9           A. I just don't remember right now how the  
10          initial communications were initiated.

11          Q. Right. So that's a different question.

12          A. Okay.

13          Q. Was there any document that you drafted  
14          before you talked to a lawyer that had your first  
15          stab at what 2289, what would become 2289?

16                 MR. ALLEN: And again, please note my  
17          previous objections to the extent that that  
18          document was prepared by the association  
19          with respect to proposed legislation, I'm  
20          going to instruct you not to answer. To  
21          the extent you can answer, please feel free  
22          to try to do so.

23                 THE DEPONENT: Okay.

24                 MR. ALLEN: If such a document exists  
25          that he's asking about.

1     their concerns were, they would have shared that  
2     information with you.

3           A.     Yes, sir.

4           Q.     And you may have a copy of that?

5           A.     I may, yeah. Yeah, I may.

6           Q.     Okay. Setting -- and I'm going to talk  
7     before you engaged Mr. Allen's law firm to help with  
8     you 2289, had you discussed proposed language with  
9     anyone who was not an attorney before you -- before  
10    that?

11           MR. ALLEN: Same objection as it  
12           relates to internal association  
13           communications. I'm going to instruct you  
14           not to answer that. Otherwise, feel free  
15           to answer the question, though.

16           THE DEPONENT: You know, I talk to a  
17           lot of different individuals. I mean,  
18           that's what I do.

19    BY MR. PURDON:

20           Q.     Right.

21           A.     So I can't think of any specific -- could  
22     you say the question one more time?

23           Q.     I'm asking about specific language. Did you  
24     show anybody language, did you say hey, get me what  
25     you -- send me an e-mail of what you want in the

1 bill. I'm talking about any specific discussions of  
2 specific language not with a lawyer and prior to  
3 engaging Mr. Allen's law firm?

4 A. You know, as I consider -- I can't remember  
5 any specific discussions.

6 Q. Was specific language ever discussed at any  
7 NDIDA board meetings before you retained Mr. Allen?

8 MR. ALLEN: Same objection. I'm going  
9 to instruct you not to answer on the basis  
10 of the first amendment privilege.

11 MR. PURDON: Well, Jason, let me posit  
12 this. I'd like to establish that there  
13 were discussions. Because if there  
14 weren't, then it's a different world,  
15 right?

16 MR. ALLEN: Okay.

17 MR. PURDON: I'd like to establish  
18 there were discussions. And I think my  
19 question was a yes or no one and then I  
20 understand what you're saying.

21 MR. ALLEN: So you're seeking to  
22 establish whether discussions occurred, not  
23 the substance of the discussions?

24 MR. PURDON: Exactly.

25 MR. ALLEN: Okay.

1 Q. And he scrubbed it through alleged counsel?

2 A. Yes.

3 Q. And then that became the final draft?

4 A. Correct.

5 Q. That you then shared with the other sponsors  
6 and that they had to sign off on?

7 A. That is correct. But Senator Armstrong,  
8 obviously, is involved in that with visiting with the  
9 other sponsors, of course, yeah.

10 Q. Sure. So you identified Senator Armstrong,  
11 as I don't know what words you want to use, your  
12 primary sponsor or your initial sponsor?

13 A. We asked -- we asked Senator Armstrong if  
14 he'd be the prime sponsor of this bill, yep.

15 Q. So he helped you get some of these other  
16 sponsors as well?

17 A. Yes, yeah.

18 Q. So which sponsors did you get, did you  
19 recruit to be sponsors besides Senator Armstrong?

20 A. Senator Armstrong made the decision who  
21 ultimately made the decision who he wanted to have as  
22 co-sponsors on that bill.

23 Q. Okay.

24 A. That's their discretion, a primary sponsor,  
25 they introduce their bill, and they select who they

1           A.    Yep, so he was the president.

2           Q.    Yeah.

3           A.    So did he call me to discuss the details of  
4 the bill after it was introduced?

5           Q.    Yep.

6           A.    I don't think Rick did, no.

7           Q.    Did -- did anybody from EDA call you to  
8 discuss the bill after it was introduced?

9           A.    I don't remember any specific discussions.  
10 Yeah, I don't remember any specific discussions.

11          Q.    Did you -- did you tell your members in --  
12 prior to the introduction of the bill, the drafting  
13 of the bill in 2017?

14          A.    Uh-huh.

15          Q.    Prior to that point in time did you tell any  
16 the members of NDIDA that you were drafting that  
17 legislation?

18               MR. ALLEN: I'm going to instruct you  
19 not to answer pursuant to the first  
20 amendment privilege as it relates to  
21 discussions with your members regarding the  
22 introduction of legislation. To the extent  
23 you can provide an answer as to perhaps  
24 whether your members were aware, I don't  
25 know if that satisfies your question, but



1 year or are you helping in amendments every year, how  
2 typical is the -- the situation you just described  
3 with Mr. Keiser, how typical is that, per -- once per  
4 session, twice per session, can you give me some  
5 ballpark?

6 A. You know, in any given session, let's say in  
7 any given biennium, let's go that route, session  
8 biennium, a legislator may reach out to us regarding  
9 what is our position on a given issue.

10 Q. Right.

11 My question, though, was about drafting  
12 legislation.

13 A. Okay.

14 Q. Do you typically get involved in looking at  
15 language in helping draft or assisting in amendments,  
16 how typical is that?

17 A. It's not often. There we go.

18 Q. Do you ever get involved assisting in  
19 campaigns? Does NDIDA ever get involved in assisting  
20 in campaigns, aside from donating money?

21 A. Not other than PAC, no.

22 Q. Besides yourself, did anyone else lobby on  
23 behalf of NDIDA for 2289?

24 A. Oh, yes. Well, you said on behalf of N --  
25 NDIDA.

1 MR. PURDON: Thanks, guys.

2 THE DEPONENT: Thanks, Tim.

3 MR. PURDON: We'll go off the record.

4 THE VIDEOGRAPHER: We're going off the  
5 record. The time is 12:31 p.m.

6 (Recess.)

7 THE VIDEOGRAPHER: The time is  
8 1:15 p.m. We're going back on the record.

9 MR. PURDON: What are we on there?

10 THE REPORTER: Number 9.

11 MR. PURDON: 9? All right.

12 (Larsgaard Exhibit No. 9 marked for  
13 identification.)

14 BY MR. PURDON:

15 Q. Matthew, you're familiar with representative  
16 Cindy Schreiber Beck, correct?

17 A. I know who she is, yes.

18 Q. And she serves down in the Wahpeton area, do  
19 I have that right?

20 A. I believe she does.

21 Q. And you -- did you meet with her before  
22 Senate Bill 2289 was introduced?

23 A. I don't believe I did.

24 Q. Did you discuss Senate Bill 2289 with her  
25 after it was introduced?

1           A.    Yes, she sits on the -- yes.

2           Q.    She sits on one of the committees?

3           A.    Yeah.

4           Q.    Which one?

5           A.    House Ag.

6           Q.    House Ag.

7           A.    Yep.

8           Q.    You are -- did you ever meet one-on-one with  
9 her to discuss the bill?

10          A.    I've met one-on-one with most legislators  
11 when I'm lobbying a bill, so actually most of the  
12 legislators in the House and Senate I met with  
13 one-on-one.

14          Q.    Do you recall anything specific about with  
15 your meeting with Cindy Schreiber Beck?

16          A.    Nothing that I didn't discuss with everybody  
17 else.

18          Q.    Right. So you're familiar with what's been  
19 marked as Exhibit 9 which is an article from the  
20 Wahpeton Daily News in which Ms. Schreiber Beck talks  
21 about Senate Bill 229, and this was before the bill  
22 was passed, correct?

23          A.    March 3rd, well, do you have the dates the  
24 bill was passed, Tim?

25          Q.    Well, I've got your press release we'll get

1 to. It's dated ...

2 A. It looks like this is March 3rd. This  
3 article is March 3rd.

4 Q. It was passed late March it looks like,  
5 March 16, signed by Governor Bergum March 16. Does  
6 that sound right?

7 A. It sounds right.

8 Q. So this would have been a little bit before  
9 that?

10 A. Before the governor signed, yeah.

11 Q. Yeah. So, you know, in this article,  
12 obviously, you -- we talked about this before, you  
13 note in describing the bill in the newspaper says "If  
14 there's a building and it says 'John Deere' on it,  
15 now they (could) sell anything out of that  
16 particularly -- that particular building, Schreiber  
17 Beck continued." Do you see that language in the ...

18 A. I see the language you just -- yes.

19 Q. Yes. And just for the record, you just  
20 circled the language on the exhibit which is fine.

21 A. Oh, I'm not supposed to mark it?

22 Q. It's fine. If you want to, you can. I just  
23 need to make sure that it doesn't -- isn't that I  
24 circled it, that you've circled it, it's fine. No  
25 worries.

1           A.     Okay.

2           Q.     Did you explain the bill in those terms to  
3     her?

4           A.     No, I didn't.  And -- and the reason why I  
5     didn't is because the law prior to Senate Bill 2289  
6     states that a manufacturer may not prohibit a dealer  
7     from purchasing machinery or equipment that's  
8     manufactured by another manufacturer.  So, for  
9     example, if a dealership, an independent business  
10    happens to have that John Deere sign outside of the  
11    dealership prior to Senate Bill 2289, they can buy  
12    equipment from Case, from Brant, from whoever else,  
13    new equipment, put it on their lot and display it for  
14    sale.  So I don't know what her intent of this  
15    statement was, but I certainly would not have told  
16    her this, because I don't -- again, as I just  
17    described, dealers are independent businesses that  
18    carry multiple brands of multiple products.

19          Q.     Right.  You would agree with me, though,  
20    that a customer would expect that a building that had  
21    a John Deere sign on it would actually have  
22    John Deere products inside, you'd agree that that's a  
23    valid customer expectation?

24                 MR. ALLEN:  Object to the form.

25                 Foundation.

1     that.

2                 So what happens is over time, Tim, these  
3     dealers are investing hundreds of thousands, millions  
4     of dollars of their own money in growing the  
5     business. And they're spending their money to create  
6     brand equity in the John Deere brand which they don't  
7     own. The Case IH, they're spending their money to do  
8     that. And with that in mind, the issue is, with all  
9     of the time, effort and talent that they have put  
10    into growing the business into creating customer  
11    awareness about a particular manufacturers' equipment  
12    brand, et cetera, there's a lot of value that the  
13    dealers place in growing that brand equity and to  
14    walk away from a contract, for example, if a dealer  
15    said you know what, Case IH, this contract you have  
16    is absolutely terrible, I don't want to sign it and  
17    Case IH says, "Fine, we're pulling the contract, you  
18    are no longer a Case IH dealership, that dealer is  
19    now in a terrible position, because Case IH ...

20         Q.    So they don't have -- the dealer doesn't  
21    have as much power in that negotiation as the  
22    manufacturer, that's what you're saying?

23         A.    That's exactly what I'm saying. They have  
24    really no power to negotiate, because these large  
25    global companies have so much, really all of the

1 negotiating power.

2 Q. So -- so the intent of the statute here was  
3 to -- was to balance out that negotiating power?

4 A. The -- the intent of the statute is to  
5 create a more equitable relationship between  
6 manufacturers and ag, you know, farmers, communities,  
7 small towns, dealerships, yep, the ag community.

8 Q. Well, I don't understand the inequity  
9 between say Case IH and a farming community. They're  
10 not -- they're not in a contract together.

11 A. Uh-huh.

12 Q. The contract is between the dealer and the  
13 manufacturer, correct?

14 A. That is correct, yeah.

15 Q. And so -- okay. Got it.

16 A. But they exist in the same environment, and  
17 they are -- their livelihood depends on each other.  
18 So the farmers absolutely depend on Ag community,  
19 small towns depend on dealers and the relationships  
20 manufacturers have with dealers for their survival.

21 Q. And so this legislation was intended to  
22 bring more balance to that power disparity. I think  
23 that's what you're saying?

24 A. Yeah. So the -- the legislation was  
25 intended to create a more equitable environment

1 or.

2 Q. Right.

3 A. Or legislation.

4 Q. Okay. So the -- 2289 was edited or excuse  
5 me, edit -- was amended as it made its way through  
6 the legislature, correct?

7 A. It was amended in the Senate.

8 Q. Yeah. And you were -- I mean, you were part  
9 of that process, your input went into that amendment  
10 process, is that fair to say?

11 A. It's fair to say that, yes.

12 Q. And was that through acting through Senator  
13 Jerry Klein?

14 A. Senator Klein developed -- okay. So Bobcat,  
15 wanted a -- they came to the Senate Ag hearing.  
16 Bobcat asked to have the bill amended to define what  
17 farm equipment was. And Senator Klein approached the  
18 lobbyists from Bobcat who asked for the definition of  
19 farm equipment and approached me and sat us down  
20 together and said, "Gentlemen, Bobcat wants an  
21 amendment, here's some language." They looked at the  
22 language that legislative counsel had developed, and  
23 at the end of the day, Bobcat was sat -- comfortable  
24 with the language and we were comfortable with the  
25 language.



1           Q.    Right.  So you and I talked about that at  
2   the -- at the hearing, and I think we were a little  
3   bit ships passing in the night.  I understand the --  
4   the Bobcat part of it, but Jerry Klein at one of the  
5   hearings, said that I ran the amendment past  
6   Mr. Larsgaard, and that -- that was -- he was talking  
7   about in conjunction with that Bobcat process, right?

8           A.    I don't know what he meant by that, but I  
9   can tell you that representatives from Bobcat, their  
10  lobbyists and Jerry Klein and I, we all met, and  
11  Jerry Klein, again, no other manufacturers were there  
12  to testify other than a local contract lobbyist that  
13  AEM had hired.  Other than that, the amendment to  
14  just define what farm equipment was, and let's make  
15  no mistake, was just an amendment to define what is  
16  farm equipment.  Bobcat was comfortable with the  
17  language, we were comfortable with it, and that's the  
18  extent of it.

19          Q.    Without the amendment, Bobcat was  
20  considering opposing the bill, correct?

21          A.    Bobcat, I believe -- I believe the history  
22  shows that Bobcat opposed it, because I think they  
23  were -- they didn't understand the legislation.

24          Q.    But they -- they were concerned that they  
25  were going to be subject to this as farm equipment

1 manufacturers?

2 A. I believe that they thought that they were  
3 going to be affected by the bill, but I never did  
4 understand their position, Tim, because -- and here's  
5 why. We never changed or added any new sections. I  
6 mean it was farm equipment in the past. We just  
7 expanded, it was already in place. We enhanced what  
8 was already in place. They thought they were being  
9 pulled into something --

10 Q. Well, so --

11 A. And I never did understand their position on  
12 that.

13 Q. So Bobcat's lawyers were concerned that this  
14 bill might have a negative impact on them and they  
15 were opposed to it, is that --

16 MR. ALLEN: Object to the form and  
17 foundation.

18 THE DEPONENT: So Bobcat thought that  
19 they were being pulled into this  
20 legislation and you know what, they  
21 weren't. So I don't understand -- I don't  
22 understand how Bobcat came to that  
23 conclusion.

24 BY MR. PURDON:

25 Q. Yeah. I understand that.

1           What I'm saying to you is, you're trying to  
2   get this bill passed, right, this is your top  
3   priority for the 2017 legislative session, right?

4       A.    It was a -- it was a good bill, a major  
5   bill, yeah.

6       Q.    It was the top priority of NDIDA and  
7   yourself in that session, wasn't it?

8       A.    It was a top priority.

9       Q.    And it was a no holds barred game time,  
10   right, this is -- this is really important to your  
11   members?

12      A.    The bill is important to our members, yep.

13      Q.    Right. And you didn't want Bobcat to be  
14   opposed to this, because that could be bad for the  
15   bill's passage, right?

16      A.    Well, I didn't want any manufacturers to  
17   oppose the bill.

18      Q.    But I'm asking about Bobcat.

19      A.    Okay.

20      Q.    Right? Because they're in North Dakota, and  
21   they have a bigger presence in North Dakota than some  
22   of the other manufacturers, right?

23      A.    What do you mean by "a bigger presence"?

24      Q.    Well, yeah, I mean --

25      A.    As far as the sale volume?

1 Q. Yeah.

2 A. I think John Deere has a bigger presence  
3 than Bobcat. I mean, they've got --

4 Q. So I don't know if we're passing here or  
5 what, but it was important for you to get this bill  
6 passed to not have Bobcat opposed to it, is that a  
7 true statement?

8 A. I don't want any manufacturers to oppose the  
9 bill.

10 Q. That's not --

11 A. And it's a top priority -- it was a priority  
12 for us to pass the bill.

13 Q. Okay. So did -- whether or not Bobcat  
14 needed these changes, there were some changes made to  
15 the bill that were at the request of Bobcat; is that  
16 fair?

17 A. Bobcat made a request to have the bill  
18 amended.

19 Q. And then a meeting took place with you,  
20 Jerry Klein and Bobcat's representatives to make  
21 those changes or to agree on those changes?

22 A. That is correct.

23 Q. So Jerry Klein was the one who sort of  
24 brought the sides together and got that worked out?

25 A. Correct.

1           A.     Yes.    Maybe a former farmer.

2           Q.     So, on page 31 of Exhibit 4, which is the  
3     legislative history, let me see it I can find exactly  
4     what I'm looking for here.

5                   MR. ALLEN:   Which page, Tim?

6                   MR. PURDON:   I think 31.

7                   MR. ALLEN:   Okay.

8     BY MR. PURDON:

9           Q.     But maybe I'm wrong.

10                   So this is the testimony from the -- if you  
11     go back to 29, Matt -- Matthew, from February --  
12     excuse me, the March 9th, House Ag Committee,  
13     correct?

14           A.     Yes.

15           Q.     And you testified on behalf of the bill  
16     there?

17           A.     Correct.

18           Q.     And on page 31, vice -- Matt --  
19     Wayne Trottier is the vice chairman of that  
20     committee, correct?

21           A.     Yes.

22           Q.     And he says here, we are discussing -- this  
23     is after you've done in testimony and some other  
24     folks, too, "We are discussing dealers -- dealers and  
25     manufacturers.  It boils down to -- to the farmers.

1 maybe, Tim. I'd have to review the legislative  
2 history, because there is data. There's some  
3 analytics within some of the testimony that's in  
4 here, so possibly.

5 Q. So that is --

6 A. The answer I have is possibly.

7 Q. Okay. The information you're referring to,  
8 just so I'm clear on that page, is part of the  
9 testimony of -- who is this -- Mark Taylor from the  
10 -- who was a past president of NDIDA?

11 A. Yes, sir.

12 Q. In the bill itself, though, that was passed,  
13 there were no findings of fact set forth by the state  
14 legislature, correct?

15 A. Well, what's a finding of fact?

16 Q. Well, sometimes legislation has findings of  
17 fact, and then they pass the legislation.

18 A. I'm not familiar with that.

19 MR. ALLEN: I'd just also note for the  
20 record that counsel has had our responses  
21 and State's responses for several weeks.  
22 We haven't received any effort to confer as  
23 to the basis for the denial. So to the  
24 extent there is a question, as that's  
25 always the preferred course of action.